

## Message Text

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ACTION L-02

INFO OCT-01 EA-10 ISO-00 SNM-02 JUSE-00 RSC-01 SSO-00 /016 W

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O 231547Z JAN 75

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC NIACT IMMEDIATE 7498

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E.O. 11652 N/A

TAGS: CPRS PFOR SNA JA

SUBJ: JUDICIAL ASSISTANCE - JUSTICE DEPT DEPOSITION

REF: STATE 15398

1. ON EVENING 22 JAN AND PRIOR TO RECEIPT REFTEL EMB APPROACHED GOJ AND ASKED FOR EXTENSION OF TIME IN ORDER TO HOPEFULLY COMPLETE DEPOSITION OF AT LEAST FIRST WITNESS USING ARGUMENTS SET FORTH IN PARAS 1 AND 2 OF REFTEL.

AT FIRST GOJ WANTED ASSURANCE CROSS EXAMINATION WOULD BE COMPLETED BY NOON FRIDAY 24 JAN BUT FINALLY, AFTER DISCUSSION WITH MINISTRY JUSTICE, POLICE AND OTHER AGENCIES AGREED TO EXTENSION FOR FULL DAY FRIDAY ON ABSOLUTE CONDITION DEFENDANTS WOULD LEAVE THAT NIGHT.

2. GOJ POSITION IS BASED ON CONSIDERATION MANY LOGISTICAL FACTORS SUCH AS DETAIL OF 50 LOCAL POLICE ASSIGNED TO SECURITY AT HOTEL, NUMEROUS OTHER POLICE AT OTHER LOCATIONS, ESCORT TO AND FROM PRISON, OVERTIME, INTERRUPTIONS IN LEAVE OF PRISON WARDENS WHO ARE COMPLAINING BITTERLY, UNION TROUBLES, ETC.

3. UPON RECEIPT REFTEL AND IN RESPONSE DEPT REQUEST DCM SHOESMITH AND CONGEN CROSSON MADE PERSONAL CALL ON DIRECTOR-GENERAL YAMAZAKI OF AMERICAN AFFAIRS BUREAU AND PRESENTED NOTE VERBALE SETTING FORTH ESSENCE OF REFTEL AND REQUESTING EXTENSION OF TIME IN WHICH TO COMPLETE AT LEAST THE DEPOSITION OF WITNESS ADAMS AND ALSO GAMBLE IF THIS MIGHT BE POSSIBLE.

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YAMAZAKI SAID THE REQUEST WOULD BE CONSIDERED BY MFA,

JUSTICE, POLICE AND OTHER AGENCIES. HE ASKED IF EMB COULD GIVE AN ASSURED TIME FOR COMPLETION AND SINCE WE HAVE DONE THIS TWICE PREVIOUSLY AND BEEN PROVED WRONG, DCM COULD OFFER NO DEFINITE ANSWER AS TO TIME. THIS WILL PROVE TO BE THE CRUCIAL POINT.

4. YAMAZAKI THEN SUGGESTED THAT STATE AND JUSTICE DEPT MIGHT SOMEHOW BRING TO THE ATTENTION OF JUDGE CONTI THE FACT THAT THE DEFENSE IS DOING EVERYTHING IN ITS POWER TO DELAY COMPLETION OF THE DEPOSITION AND POINT OUT TO HIM THE GRAVE PROBLEMS AND EXPENSE FACING JAPANESE AUTHORITIES AND SOMEHOW GET A DECISION OR RULING FROM HIM TO EFFECT THAT REGARDLESS OF WHETHER THE DEPOSITION IS COMPLETED THE PROCEEDINGS WILL END AT A FIXED TIME AND THE SOONER THE BETTER. PRISON RULES PROHIBIT WORKING BEYOND 12 NOON SATURDAY OR ON SUNDAY. UNLESS SUCH A RULING CAN BE OBTAINED EMB BELIEVES GOJ WILL DECIDE IT MUST REGRETFULLY ASK THAT DEFENDANTS LEAVE FRIDAY NIGHT AS PRESENTLY AGREED.

5. IN LONG CONVERSATION WITH CONGEN BY PHONE TONIGHT U.S. ATTY NERNEY STATED THAT EVEN WHEN CROSS EXAMINATION BY ALL FOUR DEFENSE ATTORNEYS IS COMPLETED THEN THEY WILL STILL HAVE THE OPPORTUNITY FOR RE-CROSS EXAMINATION EVEN IF HE ASKS NO QUESTIONS ON REDIRECT. HE COULD NOT GIVE ANY DEFINITE ESTIMATE OF THE TIME NEEDED FOR COMPLETION OF THE DEPOSITION OF EVEN THE FIRST WITNESS. AT FIRST HE SAID MAYBE A WEEK MORE BUT THEN SINCE HE FEELS THE DEFENSE IS BEGINNING TO WEAKEN A BIT AND QUARREL AMONG THEMSELVES SAID IT MIGHT POSSIBLY BE FINISHED IN THREE MORE DAYS BUT THIS COULD NOT BE GUARANTEED. AT THE END OF THIS THE THIRD DAY ATTY TOPAL HAD FINISHED HIS CROSS EXAMINATION BUT ATTY POOLE WAS BACK AGAIN HAVING RESERVED RIGHT TO RETURN. OTHER TWO ATTORNEYS HAVE NOT YET BEEN HEARD FROM. IN CONNECTION WITH THE POSSIBILITY OF CONTACTING JUDGE CONTI TO SOMEHOW SET A DEADLINE NERNEY STATED HE DID NOT BELIEVE JUDGE HAD THIS AUTHORITY AND DOUBTED ADVISABILITY OF EVEN APPROACHING HIM.

6. WHILE THIS MESSAGE WAS BEING COMPLETED ATTY NERNEY PHONED AGAIN AND REQUESTED THAT HE BE PUT ON RECORD AS REQUESTING THAT THE DCM CONTACT AMBASSADOR HODGSON WHO IS OUT OF THE CITY UNCLASSIFIED

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AND ASK HIM TO TAKE UP THE EXTENSION REQUEST AT THE HIGHEST POSSIBLE LEVEL IN GOJ, PRESUMABLY THE PRIME MINISTER, AND ASK FOR AN OPEN END OR INDEFINITE TIME IN WHICH TO COMPLETE THE DEPOSITION. WHILE SYMPATHIZING WITH NERNEYS POSITION AND HIS DESIRE FOR SUCCESSFUL PROSECUTION OF THIS MOST IMPORTANT CASE, DCM DOES NOT FEEL THAT THIS APPROACH WOULD BE ANY MORE FRUITFUL THAN THE LEVEL AT WHICH OUR REQUEST IS ALREADY BEING CONSIDERED.

DCM FEELS SUCH ACTION WOULD NOT BE APPROPRIATE AND THAT  
NEITHER HE NOR AMBASSADOR SHOULD TAKE THIS STEP  
WITHOUT SPECIFIC INSTRUCTIONS FROM THE DEPT TO DO SO.

7. IT SHOULD BE REMEMBERED THAT IN MAKING ITS DECISION TO PERMIT  
THE TAKING OF THIS DEPOSITION THE GOJ RELIED ON THE ESTIMATES  
OF THE JUSTICE DEPT THAT THE ENTIRE PROCEEDING, INCLUDING  
COMPLETE DEPOSITION OF BOTH WITNESSES WOULD LAST ONLY THREE DAYS.  
ALL OF ITS PLANS WERE BASED ON THIS TIME FRAME. EMB IS NOW  
IN POSITION OF SAYING THAT AFTER FOUR DAYS OF TESTIMONY  
THERE IS NO ONE IN USG WHO CAN FURNISH RELIABLE ASSURANCE  
OF WHEN EVEN THE DEPOSITION OF THE FIRST WITNESS WILL END.

8. EMB REQUESTS DEPARTMENTS GUIDANCE AND INSTRUCTIONS INCLUDING  
THE REPLY EMB SHOULD MAKE TO YAMAZAKI SUGGESTION SET FORTH IN  
PARA 4. SOONEST.  
HODGSON

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